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## REVIEW ARTICLE

# JUDICIAL ACCOUNTABILITY FOR CONTROL ON FREEDOM OF SPEECH WITH RESPECT TO PEOPLE'S RESPONSIBILITY

# Judicial Accountability for Control on Freedom of Speech with Respect to People's Responsibility

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In a democracy, the role of judiciary is crucial. Judiciary is a faithful keeper of the constitutional assurances. An independent and impartial judiciary can make the legal system vibrant. Our Indian judiciary can be regarded as a creative judiciary. Credibility of judicial process ultimately depends on the manner of doing administration of justice. **Justice K. Subba Rao** explains the function of the judiciary as thus:

- It is a balancing wheel of the federation;
- It keeps equilibrium between fundamental rights and social justice;
- It forms all forms of authorities within the bounds;
- It controls the Administrative Tribunals.

Justice – Social, economic and political is clearly laid down in the preamble as the guiding principle of the constitution. Social justice is the main concept on which our constitution is built. **Part III** and **IV** of Indian constitution are significant in the direction of Social Justice and economic development of the citizens. Judiciary can promote social justice through its judgments. In other sense, they are under an obligation to do so. While applying judicial discretion in adjudication, judiciary should be so cautious. And prime importance should be to promote social justice.

Supreme Court had itself suggested in one of the early and landmark case (**Bandhu Mukti Morcha v. Union of India 1984**) 1 SCC 161, 234) that There is a great merit in the court proceedings to decide an issue on the basis of strict legal principle and avoiding carefully the influence of purely emotional appeal. For that alone gives the decision of the court a direction which is certain and unfaltering, and that especial permanence in legal jurisprudence which makes it a base for the next step forward in the further progress of the law. Indeed both certainty of substance and certainty of direction are indispensable requirement in the development of the law and invest it with credibility which commands public confidence in its legitimacy.

The Court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the executive and the legislature by the constitution. Clear violation of constitutional or statutory provision must be interfered by the apex judiciary. If a considered policy decision has been taken which is not in conflict with any law or is not mala fide, it will not be in Public Interest to require the court to go into and investigate those areas which are the function of the executive. When two or more options or views are possible and after considering them the government takes a policy decision it is then not the function of the court to go into the matter a fresh and in a way, sit in appeal over such a policy decision (**Balco v. Union of India** (2002) 2 SCC 333). whatever method adopted by judiciary in adjudication, it must be the procedure known to the judicial tenets. .

It is proper to conclude with the note adopted by Justice **Ranganatha Misra** in the case of **Dr. P. Nalla Thampy Thera v. Union of India** as follows

"We think it proper to conclude our decision by remembering the famous saying of **Herry Peter Broughan** with certain adaptations:

"It was the boast of Augustus that he found Rome of bricks and left it of Marble

"But how noble will be the boast of the citizens of free India of today when they shall have it to say that they found law dear and left it cheaper; found it sealed book and left it a living letter; found it the patrimony of the rich and left it the inheritance of the poor; found it the two edged sword of craft and oppression and left it the staff of honesty and the shield of innocence.

"It is only in a country of that order that the common man will have his voice heard".

Even if you want advocates then go for public advocates aided and supported by states. In the process of delivery of justice there is no parity of power. There is need for rethinking or revamping whole judicial system. Time count is very important to

determine the scope of Article 14. The law of Limitation: (Order VII R6 CPC) The Limitation Act of 1963 provides for the specific period for a person to effectuate his rights. This bars the remedy after certain period of time but the rights subsists. The Act was passed during British in the year 1793 and was amended and consolidated later. The same was adopted by Independent India, the effect of this is that it denies justice after a period of time, thus invalidating and defeating the time spectrum as a person is denied for his right after certain period of time, thereby denying interest spectrum as interests of such persons who cannot approach to Court thus, their interests get affected and influence of laws, on such aggrieved persons was unable to give remedy.

Limitation act basically does not defeat right but basically the remedy is denied. Article 14 guarantees moment to moment protection because the idea of justice under article 14 is recitative justice. Sanction for prosecution abridges away my right to file suit. If any aggrieved person failed to file suit within limitation time, then wasn't it is the duty of the court to take judicial notice of this as clearly provided under Article 57(1) of Indian Evidence Act. Arrears of cases: Because delay in legal proceedings, there is huge backlog of cases which are pending, and it take approximately 20 years for a case to be disposed off, this snail pace speed of dispensation of cases throughout the years is effecting the ethical count, as justice delayed is justice denied and also adversely affecting the time count spectrum and interest spectrum is affected when litigant suffer throughout the years. Selection of judges: As far as selection of judges is concerned, according to the text of the Constitution, President has the power to appoint judges, he has discretion to choose and he can consult the Chief Justice of India as well as senior most judges of Supreme Court in matter of appointment. But the SC in SP Gupta and others V. Union of India [9] held that consultation by CJI means his consent. If consultation means consent then the power spectrum shifted from the President to CJI, and it is entirely wrong interpretation of the Constitution. [10]

The judges are selected according to the political loyalties acceptable to the ruling party. Genetic engineering from the political angle is made secretly operational in the case of judges, and then at the performance level agrarian laws are struck down, welfare measures are whittled down and progressive projects meet their judicial water loop. [11] There no system for disciplining corrupt judges. Impeachment is next to impossible. One cannot even register an FIR against a judge taking bribes openly without the prior permission of the Chief Justice of India. Added to all these immunity to judiciary is the power of contempt of Court, which can be used by the judiciary to stifle public criticism, or even an honest evaluation of the judiciary. This threat of contempt has prevented a frank discussion or a healthy debate on the functioning of judiciary. The judiciary

recommended that the Chief Justice should be the final word in deciding whether any information about the Court should be given out or not. Most High Courts have not even appointed a public information officer under the RTI Act. The Delhi High Court has framed rules which prohibit the release of non judicial information about the court, such as purchases and appointments. All this has ensured that the judiciary becomes a law unto itself, totally non transparent, and accountable to none. What we need is the reformative method of selection of judges. Advocates should not be allowed to become judges nor should be the practice any criteria for the selection of judges. When one has to analyze the law, analyze the constitutionality of law, because every judicial process is constitutional specific. There are numerous instances of cases where SC wrongly interpret the provision of Constitution like Joshi v. Madhya Bharat where it was held that place of birth is relevant or in Balaji v. State of Mysore case[12] where caste was given prominence. Here, court indirectly held that caste and religion is important this is wholly unconstitutional. By upholding pro government attitude, courts are cheating the citizens who belong to socially advantageous sections of society but are economically backward enough not to get an opportunity of education. Reservation in the matter practiced today cannot lead to the fulfillment of Article 45. We should make the quest to achieve all this on the bedrock of Article 14. Judges have to act strictly in accordance with law, on the matter of Judicial process, the duty of the court is to ascertain the law and apply it and judge the fact in the light of that law, here court has no power to legislate.

There is nothing like judges made law. Indian Judiciary: Tyranny or Activism.....is it accountable to anyone? What exactly is Indian judiciary? Is it accountable to anyone? These are certain questions which require immediate and remedial answers. Peeved at judiciary donning the role of Executive in several cases, **Somnath Chatterjee** warned of 'serious implications' if this trend continued, asserting no one should behave as a 'super organ' of the State. **Chatterjee said** 'nowadays' there has been 'umpteen' cases where judiciary had "intervened in the matters entirely within the domain of the executive, including policy decisions despite the Constitution according pre-eminent position to the Legislature. [19] The judiciary, the principal system present in all the societies created, mainly to fight injustice, lawlessness and uphold what is just, right and fair. This system if personified as a human being tends to become corrupt and deceiver like any normal human being is born with some imperfections. These imperfections have off late become the setbacks of the judiciary. Some call the judiciary the temple of fairness and others call it the temple of loopholes. Judiciary is one pious system which has the inherent right to award capital punishment. It has the legal power to bring death to the law breakers; it can

punish, isolate and take away the right to a pleasant social life.

**Indian Judicial Process & Accountability** We always use to think about the actual judicial process. The most important understanding of the judicial process requires us to think about more than formal law and procedure. The first question which often comes in one mind after analyzing the topic is what do you exactly mean by critical analysis of judicial process? Is it merely a statement of criticism or something beyond the imagination of one's thinking? However, if we closely analyses our present topic, then all the doubts become crystal clear because sixty two years after independence, the entire judicial system is on the verge of collapse. While the superior courts have earned praise from citizens for intervening in citizen's concerns raised through public interest petitions, only those with resources or cunning can hope to get ordinary justice. Over three crore cases are presently pending in various courts. In most cases, citizens have little hope of getting justice in their lifetime. Corruption and abuse of court processes are rampant. So, what exactly judicial process is? Everything done by judge in the process of delivery of justice is called Judicial Process. It basically confines itself to the study of "is" to "ought" of the law. Or, Judicial process is basically "whole complex phenomenon of court working" and what went wrong with this phenomenon is the issue in my current project. The judiciary is one of the pillars on which the edifice of the constitution is built. It is the guiding pillar of democracy, what is happening inside it is a fascinating study. Its log book shows that often the judgments of the Apex court degenerated into a dismal failure. There are many self inflicted wounds. This is the story of 59 years of the Supreme Court. Speaking of the Supreme Court of United States of America, **Jackson J., of the court said:**

"We are final, not because we are infallible; we are infallible because we are final." The judgments of the Supreme Court are final but not infallible. They require constructive criticism, especially to take them out of the morass of alien concept and ideas foreign to the land and culture. The Supreme Court is virtually the proverbial ivory tower, with the judges sitting on the top. Disturbed by some of its judgments, **Pt. Nehru** once said in a diatribe, "Judges of the Supreme Court sits on ivory towers far removed from ordinary men and know nothing about them." The Supreme Court is sometimes said to be beyond the reach of a common person.

The judges of India's highest court consider themselves to be gifted with infallibility because of the finality of their judgments. This shall no be. Like other institutions they too must suffer when they go wrong or are negligent. A powerful Performance Commission to investigate the delinquencies of judges is essential if the number of instances of egregious judicial blunders

is to be minimized. Rules of good conduct that were voluntarily created do exist. But they carry neither sanction nor penalty and are violated, though yet rarely. If Parliament has enough vitality and sense of duty it must forthwith create a comprehensive code of judicial conduct for higher judges when state power is exercised by constitutional instrumentalities.

Transparency in functioning and accountability with respect to duties are fundamental in a democracy. Parliament is the ultimate inquest of the nation, and judges are no exception to this. If robes rob by corruption they must be subject and answerable to, like other constitutional agencies, the people through Parliament. They are no Niagara but great power canalized and controlled in their furious flow, ultimately to be beneficial to the nation. This process of social engineering is part of social philosophy which is structurally basics to legal engineering, so that justice, social, economic and political; human rights and fundamental duties laid down by the Founding fathers (vide Parts III, IV and IV A) do not remain an illusion.

Corruption among judges, even sexual misconduct, is escalating. And there is no punitive therapy save the political futility of the impeachment pharmacopoeia. One method to arrest the evil of corruption, communalism and other dangerous deviances is to insist on transparency and accountability. Probity and integrity could thus be invigilated by a high-level committee comprising the nation's most respected souls acceptable to the President, the Cabinet and others. They should be free from politics, communalism and any dark shades in public life.

#### Position of contempt in India

The Supreme Court in India to assert its independence has freely used the power to punish for contempt as and when it is criticized. The court has used this power without any comprehensive ideology. Freedom of Speech does not mean always contempt of court. *Narender D.V. Godwa v. Nineet Jain* cited from website [www.Indiankanoon.Org/29088429](http://www.Indiankanoon.Org/29088429)

The Supreme Court during last 50 years have tried to do the balancing act in a number of cases to name of few; *Reddy's Case*<sup>1</sup>, *Sharma's Case*<sup>2</sup>, *Namboodripad Case*<sup>3</sup>, *Bradakanta Mishra Case*<sup>4</sup>, *Mulgaokar's Case*<sup>5</sup> and *Shiv Shankar Case*<sup>6</sup>. But surprisingly, all the cases discussed above had varied results with no coherence. In most of the cases the tilt has been

<sup>1</sup> 1952 SCR 425

<sup>2</sup> 1953 SCR 1169

<sup>3</sup> (1970) 2 SCC 325

<sup>4</sup> (1974) 1 SCC 374

<sup>5</sup> (1978) 3 SCC 339

<sup>6</sup> (1988) 3 SCC 167

towards the contempt of court making the right to criticize a damp squib.

Should not the judiciary be accountable? Should we accept that the judiciary is above law and modify the rule of law, which says "Be you ever so high, the law is above you" to "Be you ever so high, the law is above you and the judiciary is above law"

It has rightly been said that Independence does not mean that judges be treated as presently class answerable only to God. For Justice Frankfurter said "Judges ... Just because the holders of judicial office are identified with interest of justice, they may forget their common human frailness and fallibilities...Therefore judges must be kept mindful of their limitations and their ultimate responsibility by a vigorous stream of criticism expressed with candour however blunt."<sup>7</sup>

In our democratic set up judicial accountability is ensured through:

- (i) Impeachment
- (ii) Appeal and Review
- (iii) Open trial and
- (iv) Judgments

Impeachment as a tool is cumbersome and uncertain. Out of all the tools of judicial accountability, criticism of judgment is considered to be the most viable one.

The recent case of Arundhati Roy<sup>8</sup> has once again highlighted the issue that right to criticise is a right only a letter and not in spirit. The conviction of Arundhati Roy disturbed and caused great concern amongst the leading legal personalities and more so the Media V. Venketesan writes "...the right to freedom of speech and expression guaranteed by Article 19(1) (a) of the constitution, seemed to have suffered a serious blow"<sup>9</sup>

Reasonable advertising should be there but it should not be in magical way<sup>10</sup>.

Allegations and charges against a Judge even when supported by documentary evidence rarely get any coverage in the media because of the widespread fear of contempt of court. The contempt law India allows any judge of the High Court and Supreme Court to charge any one with criminal contempt and send him to jail, on the ground that he/she has "scandalized the Court or lowered the authority of the Court". What "scandalizes or lowers" the authority of a Court is also the subjective judgment of each Judge. In Arundhati Roy's (the well known writer) case, a bench of 2

judges of the Supreme Court Charged her with contempt and sent her to jail merely because she criticized the Court in her affidavit. The facts were these: After the judgment of Supreme Court in the Narmada

Dam case, there was a public protest outside the Supreme Court in which Medha Patkar (the leader of the anti-Dam movement in India) and Arundhati Roy participated. A couple of lawyers (probably on the hint of the Court itself) filed a contempt petition against Patkar, Roy and myself (I was the lawyer of the anti-Dam movement) alleging that we had raised abusive slogans against the Court.

<sup>7</sup> Bridge v. California, 314 U.S. 252 (1941)

<sup>8</sup> JT (2000) SC 508

<sup>9</sup> Of Criticism and Contempt, Frontline, March 29 at p.27

<sup>10</sup> Hindustan Uniliver Ltd. Proctor and Gamble Home Products cited from website